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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 160617540-6540-01]

RIN 0648-XE695

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Annual Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to implement annual management measures and harvest specifications to establish the allowable catch levels (i.e. annual catch limit (ACL)/harvest guideline (HG)) for Pacific mackerel in the U.S. exclusive economic zone (EEZ) off the West Coast for the fishing season of July 1, 2016, through June 30, 2017. This rule is proposed pursuant to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The proposed 2016-2017 HG for Pacific mackerel is 21,161 metric tons (mt). This is the total commercial fishing target level. NMFS also proposes an annual catch target (ACT), of 20,161 mt. If the fishery attains the ACT, the directed fishery will close, reserving the difference between the HG (21,161 mt) and ACT as a 1,000 mt set-aside for incidental landings in other CPS fisheries and other sources of mortality. This proposed rule is intended to conserve and manage the Pacific mackerel stock off the U.S. West Coast.

DATES: Comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document identified by NOAA-NMFS-2015-0048, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2015-0048*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070; Attn: Joshua Lindsay.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the report “Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015-2016 Fishing Year” may be obtained from the West Coast Region (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua Lindsay, West Coast Region, NMFS, (562) 980-4034, *Joshua.Lindsay@noaa.gov*.

SUPPLEMENTARY INFORMATION: During public meetings each year, the estimated biomass for Pacific mackerel is presented to the Pacific Fishery Management Council's (Council) CPS Management Team (Team), the Council's CPS Advisory Subpanel (Subpanel) and the Council's Scientific and Statistical Committee (SSC), and the biomass and the status of the fishery are reviewed and discussed. The biomass estimate is then presented to the Council along with the recommended overfishing limit (OFL) and acceptable biological catch (ABC) calculations from the SSC, along with the calculated ACL, HG, and ACT recommendations, and comments from the Team and Subpanel. Following review by the Council and after reviewing public comment, the Council adopts a biomass estimate and makes its catch level recommendations to NMFS. Under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, NMFS manages the Pacific mackerel fishery in the U.S. EEZ off the Pacific coast (California, Oregon, and Washington) in accordance with the FMP. Annual Specifications published in the **Federal Register** establish the allowable harvest levels (i.e. OFL/ACL/HG) for each Pacific mackerel fishing year. The purpose of this proposed rule is to implement the 2016-2017 ACL, HG, ACT and other annual catch reference points, including an OFL and an ABC that take into consideration uncertainty surrounding the current estimate of biomass for Pacific mackerel in the U.S. EEZ off the Pacific coast.

The CPS FMP and its implementing regulations require NMFS to set these annual catch levels for the Pacific mackerel fishery based on the annual specification framework and control rules in the FMP. These control rules include the HG control rule, which in conjunction with the OFL and ABC rules in the FMP, are used to manage harvest levels for Pacific mackerel, in

accordance with the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* According to the FMP, the quota for the principal commercial fishery is determined using the FMP-specified HG formula. The HG is based, in large part, on the current estimate of stock biomass. The annual biomass estimates are an explicit part of the various harvest control rules for Pacific mackerel, and as the estimated biomass decreases or increases from one year to the next, the resulting allowable catch levels similarly trend. The harvest control rule in the CPS FMP is $HG = [(Biomass-Cutoff) * Fraction * Distribution]$ with the parameters described as follows:

1. *Biomass.* The estimated stock biomass of Pacific mackerel. For the 2016-2017 management season this is 118,968 mt.
2. *Cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 18,200 mt.
3. *Fraction.* The harvest fraction is the percentage of the biomass above 18,200 mt that may be harvested.
4. *Distribution.* The average portion of the Pacific mackerel biomass estimated in the U.S. EEZ off the Pacific coast is 70 percent and is based on the average historical larval distribution obtained from scientific cruises and the distribution of the resource according to the logbooks of aerial fish-spotters.

At the June 2015 Council meeting, the Council adopted a new full stock assessment for Pacific mackerel completed by NMFS Southwest Fisheries Science Center and along with the Council's SSC, approved the resulting Pacific mackerel biomass estimate of 118,968 mt as the best available science for use in the 2016-2017 fishing year. Based on recommendations from its SSC and other advisory bodies, the Council recommended and NMFS is proposing, an OFL of

24,983 mt, an ABC and ACL of 22,822 mt, an HG of 21,161 mt, and an ACT of 20,161 mt for the fishing year of July 1, 2016, to June 30, 2017.

Under this proposed action, upon attainment of the ACT, the directed fishing would close, reserving the difference between the HG and ACT (1,000 mt) as a set aside for incidental landings in other CPS fisheries and other sources of mortality. For the remainder of the fishing year, incidental landings would also be constrained to a 45 percent incidental catch allowance when Pacific mackerel are landed with other CPS (in other words, no more than 45 percent by weight of the CPS landed per trip may be Pacific mackerel), except that up to 3 mt of Pacific mackerel could be landed incidentally without landing any other CPS. Upon attainment of the HG (21,161 mt), no retention of Pacific mackerel would be allowed in CPS fisheries. In previous years, the incidental set-aside established in the mackerel fishery has been, in part, to ensure that if the directed quota for mackerel was reached that the operation of the Pacific sardine fishery was not overly restricted. There is no directed Pacific sardine fishery for the 2016-2017 season; therefore, the need for a high incidental set-aside is reduced. The purpose of the incidental set-aside and the allowance of an incidental fishery is to allow for restricted incidental landings of Pacific mackerel in other fisheries, particularly other CPS fisheries, when the directed fishery is closed to reduce potential discard of Pacific mackerel and allow for continued prosecution of other important CPS fisheries.

The NMFS West Coast Regional Administrator would publish a notice in the **Federal Register** announcing the date of any closure to either directed or incidental fishing. Additionally, to ensure the regulated community is informed of any closure, NMFS would also make announcements through other means available, including fax, email, and mail to fishermen, processors, and state fishery management agencies.

Detailed information on the fishery and the stock assessment are found in the report “Pacific Mackerel (*Scomber japonicus*) Stock Assessment for USA Management in the 2015-16 Fishing Year” (see **ADDRESSES**).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law, subject to further consideration after public comment.

These proposed specifications are exempt from review under Executive Order 12866 because they contain no implementing regulations.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, for the following reasons:

The U.S. Small Business Administration (SBA) defines small businesses engaged in finfish fishing as those vessels with annual revenues of or below \$20.5 million. The small entities that would be affected by the proposed action are the vessels that compose the West Coast CPS finfish fleet and are all considered small businesses under these size standards.

The small entities that would be affected by the proposed action are those vessels that harvest Pacific mackerel as part of the West Coast CPS purse seine fleet. The CPS FMP and its implementing regulations requires NMFS to set an OFL, ABC, ACL, HG, or ACT for the Pacific mackerel fishery based on the harvest control rules in the FMP. These specific harvest control

rules are applied to the current stock biomass estimate to derive these catch specifications, which are used to manage the commercial take of Pacific mackerel. A component of these control rules is that as the estimated biomass decreases or increases from one year to the next, so do the applicable quotas. For the 2016-2017 Pacific mackerel fishing season NMFS is proposing an OFL of 24,983 metric tons (mt), an ABC and ACL of 22,822 mt, an HG of 21,161 mt, and an ACT, which is the directed fishing harvest target, of 20,161 mt. These catch specifications are based on a biomass estimate of 118,968 mt.

Pacific mackerel harvest is one component of CPS fisheries off the U.S. West Coast, which primarily includes the fisheries for Pacific sardine, northern anchovy, and market squid. Pacific mackerel are principally caught off southern California within the limited entry portion (south of 39 degrees N. latitude; Point Arena, California) of the fishery. Currently there are 56 vessels permitted in the Federal CPS limited entry fishery off California of which about 25 to 39 vessels have been annually engaged in harvesting Pacific mackerel in recent years (2009-2015). For those vessels that caught Pacific mackerel during that time, the average annual per vessel revenue has been about \$1.25 million. The individual vessel revenue for these vessels is well below the SBA's threshold level of \$20.5 million; therefore, all of these vessels are considered small businesses under the RFA. Because each affected vessel is a small business, this proposed rule has an equal or similar effect on all of these small entities, and therefore will impact a substantial number of these small entities in the same manner.

NMFS used the ex-vessel revenue information for a profitability analysis, as the cost data for the harvesting operations of CPS finfish vessels was limited or unavailable. For the 2015-2016 fishing year, the maximum fishing level was 25,291 mt and was divided into a directed fishing harvest target (ACT) of 20,469 mt and an incidental set-aside of 5,000 mt. As of April

29, 2016 approximately 3,880 mt of Pacific mackerel was harvested in the 2015-2016 fishing season with an estimated ex-vessel value of approximately \$931,200.

The maximum fishing level for the 2016-2017 Pacific mackerel fishing season is 21,161 mt, with an ACT of 20,161 mt and an incidental set-aside of 1,000 mt. This proposed ACT is nearly equivalent to the ACT established for the previous year, thus it is highly unlikely that the ACT proposed in this rule will limit the potential profitability to the fleet from catching Pacific mackerel compared to last season or recent catch levels, as shown below. The annual average U.S. Pacific mackerel harvest in recent years (2010-2015) has been about 5,000 mt. In this period, the landings have not exceeded 11,800 mt. Additionally, annual average landings during the last decade (2005-2015) have not been restricted by the applicable quota. Accordingly, vessel income from fishing is not expected to be altered as a result of this rule as it compares to recent catches in the fishery, including under the previous season's regulations.

Based on the disproportionality and profitability analysis above, the proposed action, if adopted, will not have a significant economic impact on a substantial number of small entities. As a result, an Initial Regulatory Flexibility Analysis is not required, and none has been prepared.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 17, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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